



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 222, 237, and 252**

**[Docket DARS-2018-0032]**

**RIN 0750-AJ54**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Right of First Refusal of Employment-Closure of Military Installations" (DFARS Case 2018-D002)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is duplicative of an existing Federal Acquisition Regulation (FAR) clause that requires a contractor to give Government personnel the right of first refusal for employment openings in certain situations.

**DATES:** Effective [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove DFARS clause 252.222-7001, Right of First Refusal of Employment-Closure of Military Installations, the associated clause prescription at DFARS 222.7102, the policy guidance at DFARS 222.7101, and a cross-reference at DFARS 237.7401 to subpart 222.71. In the event of a closure of a military installation, the DoD 4165.66-M, Base Redevelopment and Realignment Manual, advises that Government employees at closing installations have the right of first refusal for certain jobs with contractors hired to prepare the installation for closure or to maintain it after closure. Generally, these jobs are in areas of environmental restoration, utilities modification, roads and grounds work, security, and fire protection.

The DFARS clause and associated guidance restates the information from DoD 4165.66-M. The clause also advises that Government personnel seeking preference in such situations must provide evidence of their eligibility to the contractor. The DFARS clause prescription requires the clause be included in all solicitations and contracts arising from the closure of the military installation where the contract will be performed.

FAR clause 52.207-3, Right of First Refusal of Employment, is required in solicitations and contracts that will result in a conversion of work currently being performed by the Government to work being performed under contract. Like the DFARS clause,

the FAR clause advises contractors that Government personnel who have been or will be adversely affected by award of the contract have the right of first refusal for jobs created under the contract for which they are qualified. The FAR clause also requires the Government to provide the contractor with a list of Government personnel who have been or will be adversely affected by the contract award and requires the contractor to report to the Government the names of any listed individuals who are hired after contract performance begins.

The DFARS clause is no longer necessary, because the FAR clause applies to the situations in which the DFARS clause is prescribed for use and covers the information contained in the DFARS clause. As such, this DFARS clause is now redundant and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and

clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.222-7001, Right of First Refusal of Employment-Closure of Military Installations, determined that the DFARS coverage was redundant, and recommended removal.

## **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This rule only removes obsolete DFARS provision 252.222-7001, Right of First Refusal of Employment-Closure of Military Installations. Therefore, the rule does not impose any new requirements on contracts at or below the SAT and for commercial items, including COTS items.

## **III. Executive Orders 12866 and 13563**

E.O. 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

#### **IV. Executive Order 13771**

This final rule is not an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

#### **V. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be

published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete clause from the DFARS.

#### **VI. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 222, 237, and 252**

Government procurement.

**Amy G. Williams,**

Deputy, Defense Acquisition Regulations System.

Therefore, parts 222, 237, and 252 are amended as follows:

1. The authority citation for parts 222, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**Subpart 222.71 [Removed and Reserved]**

2. Remove and reserve subpart 222.71, consisting of sections 222.7101 and 222.7102.

**PART 237—SERVICE CONTRACTING**

**237.7401 [Amended]**

3. Amend section 237.7401 by removing paragraph (d).

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.222-7001 [Removed and Reserved]**

4. Remove and reserve section 252.222-7001.

[FR Doc. 2018-11346 Filed: 5/29/2018 8:45 am; Publication Date: 5/30/2018]